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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1960
No. 155

MICHIGAN NATIONAL BANK, a banking association organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE, THE FIRST NATIONAL BANK (THREE RIVERS, MICHIGAN), COMMERCIAL NATIONAL BANK OF IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON, and THE FIRST NATIONAL BANK AND TRUST COMPANY OF KALAMAZOO, banking associations organized under the laws of the United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE OF THE STATE OF MICHIGAN, and LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

MOTION TO DISMISS OR TO AFFIRM

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SPEAKERS-HINES & THOMAS, INC., LANSING, MICH., 1960

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[1] Unless otherwise indicated, numbers in parentheses will refer to pages of the Jurisdictional Statement; numbers in parentheses followed by "a" will refer to pages in the printed appendix in the Supreme Court below; and numbers in parentheses followed by "b" will refer to pages of the appendices to the Jurisdictional Statement.

Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, appellees move that appellant's appeal from the judgment (70b) of the Supreme Court of Michigan, entered February 25, 1960, be dismissed on the following grounds:

1. It does not present a substantial federal question;

2. Appellant has not properly raised any federal question; and

3. The judgment of the Supreme Court of Michigan is conclusive.

In the alternative, appellees move that said judgment be affirmed on the ground that it is manifest the questions on which the decision of the cause depends are so unsubstantial as to need no further argument.

OPINIONS BELOW

The opinions of the courts below, and references thereto are correctly set forth by appellant (1b-69b).[2]

JURISDICTION

Appellant attempts to invoke jurisdiction of this Court under 28 U.S.C.A. § 1257(2). For the reasons set forth herein, the appeal should be dismissed.

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[2] Opinion of Judge Fred N. Searl, acting as judge of the Court of Claims (1b-44b) and opinion of the Michigan Supreme Court, reported in 358 Mich. 611, 101 N.W. 2d 245 (45b-69b).

STATUTES INVOLVED

Appellant takes too narrow a view of the statutes involved. There are taxes imposed by statutes on savings and loan and building and loan associations which are not imposed on national banking associations because of § 5219[3] of the Revised Statutes of the United States, which statutes have not been cited by the appellant.[4] General reference to taxation of financial businesses in Michigan is set forth on pp 40-43, *infra*, under Addendum A.

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[3]
Mar. 4, 1923, ch. 267, 42 Stat. 1499; Mar. 25, 1926, ch. 88, 44 Stat. 223; 12 U.S.C. § 548, hereinafter referred to as § 5219.

[4]
For convenient reference, § 5219 is set out in pertinent part, as follows:

"The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

"1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

"(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: Provided, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section."

As evidencing congressional intent to exclude certain institutions from § 5219, the courts below significantly relied upon the statutory provisions by which Congress has granted power to the states to tax federally chartered building and loan associations created by the Home Owners' Loan Act of 1933,[5] joint stock land banks, and agricultural credit corporations.

The Michigan Supreme Court quotes and refers to these statutes as follows (59b-61b):

> "The home owners' loan act was enacted by congress in 1933 (ch 64, §§ 1-9, 48 Stat 128 [12 USCA, §§ 1461-1468, inclusive, as amended]). The purpose of the act is set forth in section 5 (12 USCA, § 1464, as amended) as follows:
>
> "'(A) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as "federal savings and loan associations," and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States.'
>
> "In determining States' rights to tax such associations, congress provided in the same section:
>
> "'(H) Such associations, including their fran-

[5] June 13, 1933, ch. 64, ¶ 1-9, 48 Stat. 128; §§ 1461 to 1468, inclusive, Title 12, U.S.C.A.

chises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of title 26 with respect to wages paid after December 31, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes), and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

"The trial court commented upon congressional action disclosing that congress did not consider savings and loan associations to be in competition with either State or national banks, and in its opinion said:

"'In providing for the taxation of these institutions by the State, congress could have made the measuring stick, the limit on the rate of taxation, that imposed on national banks, also a creation of congress. It could have made such measuring stick the rate imposed by the States on State banks and it could have made it that imposed on other moneyed capital. It did none of these things. Instead, it provided that the tax imposed should not be greater than that imposed on "other similar local mutual

or cooperative thrift and home financing institutions.''

''' 'Congress thus identified the institutions that it considered to be in competition with Federal savings and loan associations. Obviously, congress did not consider savings and loan associations to be in competition with banks, either State or national.'

''The home owners' loan act of 1933 provision markedly differs with the provision in regard to States' rights to tax joint-stock land banks (act of congress July 17, 1916, ch 245, § 26, 39 Stat 380) where congress provided:

''' 'Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section 5219 of the Revised Statutes with reference to the shares of national banking associations.'*

* 12 USCA, § 932—Reporter.

''The congressional provision for national agricultural credit corporations (act of congress March 4, 1923, ch 252, title 2, § 211, 42 Stat 1469) also provided a different test for State taxation than congress provided for Federal savings and loan associations, as is disclosed by the following:

''' 'Taxation by a State of the shares in national agricultural credit corporations, or of dividends

derived therefrom, or of the income of said corporations, or real estate owned by them, shall be such only as is or may be authorized by law in the case of national banking associations; and taxation by a State of the debentures or other obligations of such corporations shall not be at a higher rate than the rate applicable to other moneyed capital in the hands of individual citizens thereof."

12 USCA, § 1261—Reporter."

QUESTIONS PRESENTED

The jurisdictional statement of appellant does not properly state any federal question. We believe the only possible federal question to be:

Is Act 9, Michigan Public Acts of 1953,[6] which imposed for the year 1952 a tax of 5½ mills on national bank shares, invalid under § 5219 because the Michigan legislature has not treated a savings share account of a savings and loan association[7] as being equivalent to a share of national bank stock, when the national bank loans a portion of its deposit money on residential properties and the savings and loan associations employ their mutual share account moneys for the same general purpose?

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[6]

Mich. Comp. Laws § 205.132a; Mich. Stat. Ann. '59 Cum. Supp. (Henderson) § 7.556(2a).

[7]

Federal statutes permit chartering of only those institutions known as "savings and loan associations". Michigan law permits organizing of both savings and loan and building and loan associations. Their functions are similar and both entities are herein termed "savings and loan associations".

By their motion to dismiss or affirm, appellees raise the following issues:

1. The question presented is too unsubstantial to warrant further argument.

2. The appellant has not properly raised any federal question.

3. The judgment of the Supreme Court of Michigan is conclusive.

STATEMENT OF THE CASE

Appellees cannot accept the appellant's statement of the case. Appellant would lead this Court to believe that national banking associations have been singled out for special tax treatment, as distinguished from general corporations and others conducting financial businesses in Michigan. An examination of the tax structure of the state of Michigan, as it affects financial institutions, clearly disproves this contention.[8]

Since the appellant has limited its case to alleged discriminatory treatment of savings and loan associations, it may be assumed that all financial businesses in Michigan, except such associations, are subject to state taxes equivalent to those imposed on appellant.

Thus, appellant's complaint is limited to alleged partial preferential treatment of both federal and state chartered

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[8] For a general discussion of Michigan's taxation of financial businesses, see Addendum A, pp 40-43, *infra*.

savings and loan associations, whose share accounts and total assets represent a small but unknown portion of the total financial business in Michigan in 1952.

Reference is made to the trial court's opinion in Appendix A of the Jurisdictional Statement for a proper statement of the case (1b-6b). As there indicated, appellant seeks to bring its cause within the rule of

First National Bank v. *Hartford*, (1927) 273 US 548.

The respective positions of the parties were stated thusly by the trial court:

> "'Plaintiff contends that the Michigan Intangible Tax Act fails to meet the requirements of Section 5219 in two particulars: (1) Michigan National Bank shares are taxed at a greater rate than other moneyed capital in the hands of individual citizens coming into competition with the business of the plaintiff bank, (2) that the Michigan Statute levies a tax upon 'the privilege of ownership' of shares in national banks; that this is not the legal equivalent of a tax upon the shares in such banks and is not one of the alternate methods of taxation permitted.'" (2b)[9]
>
> "Initially, the moneyed capital alleged by plaintiff to be in competition with it and to be taxed at a lesser rate included building or savings and loan associations, insurance corporations, credit union, finance companies, and monies in the hands of individuals and partnerships.

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[9] Contention (2) has been abandoned by the appellant, since it is not mentioned in the Jurisdictional Statement.

"Shortly before the commencement of trial, plaintiff abandoned its claim insofar as insurance corporations, credit unions, finance companies and individuals and partnerships were concerned, and its counsel stated that it would confine its case to the competition which national banks face in this state with building and savings and loan associations, both state and federal.

* * *

"Without attempting to state in detail the proofs * * *, it may be said that plaintiff claims that the proofs bring the case within the rule stated in *First National Bank* v. *Hartford*, 273 U.S. 548: * * *." (3b)

"In support of such claim, plaintiff offered a mass of statistical evidence as to the capital, assets, savings accounts, loans and investments of national banks, nationally, state-wide and of the plaintiff national bank. Like evidence was offered as to the business of the savings/building and loan associations, nationally, state-wide and in the seven cities in which plaintiff did business.

"Plaintiff further offered the testimony of officers of the loan associations and of the plaintiff banks as to the existence of competition between the two types of institutions.

"And plaintiff forcefully urges that such evidence establishes that both plaintiff and defendant make loans upon the security of mortgages on residential real property and that in that field there exists, in fact, substantial competition between the plaintiff bank and the several savings/building and loan associations.

"Plaintiff further contends that the rate of tax levied against the shares of national banks is several times that levied against the shares of savings/building and loan associations.

"Defendants take issue with plaintiff upon the existence of competition in fact, and upon the existence of discrimination in the rate of tax against the two types of institutions.

"With reference to competition, in fact, defendants contend that the savings and loan association operating in the area of plaintiff bank are small institutions as compared to the plaintiff; that they function solely in a very narrow and restricted field compared to the varied activities of plaintiff and other national banks; that the savings and loan associations' basic organization and financial structure are so different from national banks that they cannot be compared with such institutions; that the alleged competing savings and loan associations concentrate their loans in conventional loan activity prohibited to plaintiff bank while plaintiff concentrated its loan activity in fields (F.H.A. and V.A.) not utilized by the savings and loan associations; that the proofs offered do not sustain a finding that the capital employed by savings and loan associations in 1952 represented a substantial portion of capital employed in any alleged competition by the savings and loan associations with the business of the plaintiff and other national banks; that plaintiff had no difficulty in obtaining all the capital it needed in 1952 and could not trace any part of its capital to any investments and that in 1952 it loaned only its deposit money on security of real estate.

"And defendant summarizes its position on this

factual issue as follows: 'in the last analysis, savings and loan associations cannot be in "substantial competition with the business of national banks" because they cannot and do not engage sufficiently in the activities characteristically carried on by the national banks. Stated another way, if they are not comparable institutions in substance, how can they be in substantial competition?'

"Upon the issue of discrimination, it is defendants' contention that the Michigan Intangible Tax from the standpoint of the economic impact, imposes an equivalent tax burden on national banks and savings and loan associations.

"Defendants further present certain serious contentions of law which if decided in favor of defendants, make the determination of the above issues of fact unimportant. These, to a certain extent, overlap and may be briefly summarized: first, that the states have the power to give preferential tax treatment to thrift and home financing institutions such as mutual savings banks and savings/building and loan associations upon the ground of public policy without violating section 5219; and, secondly, that Congress by the enactment of the 1933 Home Owners' Loan Act has made it clear that the provisions of section 5219 do not apply to savings/building and loan associations.

"The banks of Michigan are not unanimous in this litigation.

"The Michigan Bankers Association has been permitted to file a brief as amicus curiae in which it states the position of its members in these words:

> *"'The Michigan Bankers Association has followed the trial of this case and requested permission to file this brief because of its conviction that the present system of the State of Michigan for the taxation of banks is reasonable from the viewpoint of the public, equitable from the viewpoint of the competitors, and practical from the viewpoint of the banks themselves. Actual experience with the taxation system shows that it has produced a reasonable amount of revenue to the State; that it has not created any competitive disadvantage among the various types of institutions; and that it has proven to be simple to administer. Such a system is obviously desirable, and this Association, believing the system to be entirely legal within the limitations of the Federal Constitution and Statutes, does not want to see it destroyed.'*
>
> "And their counsel takes substantially the same position upon the several questions presented as does the Attorney General on behalf of the defendants." (4b-7b) (Emphasis supplied)

The trial court determined that Michigan had authority to grant preferential tax treatment to thrift and home financing institutions, such as mutual savings banks and building and loan associations, so long as it was founded upon just reason and did not operate as an unfriendly discrimination against investments in national bank shares. The court concluded that the partial exemption rule[10] was dispositive

[10]

Reference will be made throughout this brief to this rule, which can be generally stated, as follows: A state may exempt or preferentially tax some moneyed capital employed in competition with *some* phases of the business of national banks without invalidating a tax on national bank shares, so long as the exemption or preferential treatment is for just reason and not as a hostile or unfriendly discrimination.

of the issues since Michigan's tax treatment of savings and loan associations as compared to national banks is based upon just reason and is not made with the hostile purpose of discriminating against national banks.

The Michigan Supreme Court based its judgment on the same rationale as that of the trial court.

1.

A SUBSTANTIAL FEDERAL QUESTION IS NOT PRESENTED

It is believed that appellant has not presented a substantial federal question to this Court of alleged violation of § 5219 because:

A. The Michigan tax structure does not discriminate against investors in shares of national bank stock within the meaning of § 5219.

B. Michigan is entitled to exempt or preferentially tax savings share accounts of savings and loan associations without violating § 5219.

C. The capital of savings and loan associations, representing savings share accounts, invested in the narrow and restricted field of first mortgage home financing is not in "substantial competition" with the capital of national banks within the purview of § 5219.

A. The Michigan tax structure does not discriminate against investors in shares of national bank stock within the meaning of § 5219.[11]

There is no substantial federal question presented because the state of Michigan *has followed* previous decisions of this Court under § 5219. Despite appellant's insistence that only the rate of the tax must be considered, the cases hereinafter cited clearly establish that in applying the statute the concern is with comparing the total tax burden on national bank shares and on the alleged competing moneyed capital. Further, exact mathematical equality of burden is not required. Appellees offered expert testimony before the trial judge to show the substantial tax equivalence between the two. It is the only such evidence in the record. It was relied upon by the courts below (41b, 68b). Its verity is substantiated by the fact that the Michigan Bankers Association, in its brief amicus curiae, states that this tax is "* * *equitable from the viewpoint of the competitors * * *". (7b, 46b)

As stated in

First National Bank of Guthrie Center v. *Anderson, County Auditor, et al.*, (1926) 269 US 341, at p 348:

> "4. The restriction is not intended to exact mathematical equality in the taxing of national bank shares and such other moneyed capital, nor to do more than

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[11] Since savings and loan associations may be exempted or preferred tax-wise under the partial exemption rule based on public policy or on congressional manifestation of intent in *pari materia* legislation, there cannot be substantial competition within the purview of § 5219, nor can there be discrimination within the meaning of § 5219.

require such practical equality as is reasonably attainable in view of the differing situations of such properties. But every clear discrimination against national bank shares and in favor of a *relatively material part of other moneyed capital employed in substantial competition with national banks* is a violation of both the letter and spirit of the restriction. *People* v. *Weaver,* 100 U.S. 539; *Boyer v. Boyer,* 113 U.S. 689, 701; *National Bank of Wellington* v. *Chapman,* 173 U.S. 205, 216." (Emphasis supplied, except cases)

Appellant's mechanical comparison—measurement by rate alone—is *not* an application of § 5219. A long and consistent line of decisions under § 5219 developed the proposition that it is the *effect* of the tax, not merely its *rate,* which is controlling.

This was recognized in

People v. *Weaver,* (1879) 100 US 539,

where it was held that the actual incidence and practical burden of the tax upon the taxpayer was controlling. To the same effect are

First National Bank v. *Hartford, supra,* (1927) 273 US 548, 560, 561;

First National Bank of Guthrie Center v. *Anderson, supra,* (1926) 269 US 341, 347, 348;

Tradesmen's National Bank of Oklahoma City v. *Oklahoma Tax Commission,* (1940) 309 US 560, 567;

31 Harvard Law Review, 321, 367, "Indirect Encroachment on Federal Authority by the Taxing Powers of the States"; and

Woosley, State Taxation of Banks [Chapel Hill, The University of North Carolina Press (1935)], p 24.

It is to be noted that the Court in the *Hartford* case, *supra*, in deciding that discrimination did exist, stated, at pp 551-552:

> "• • • The court below assumed, and it was not questioned upon the argument here, that this tax is not to be taken as an equivalent or substitute for the ad valorem tax levied upon bank shares, and *no question of the possible equivalence of the two schemes of taxation is presented.*• • • " (Emphasis supplied)

Davenport Bank v. *Davenport*, 123 US 83;

Amoskeag Savings Bank v. *Purdy*, 231 US 373; and

Bank of Redemption v. *Boston*, 125 US 60,

indicate that the equivalent tax burden required by § 5219 is met by an asset comparison or a capital account comparison between savings banks and national banks. The combined effect of these three cases and that of *People* v. *Weaver, supra*, (1879) 100 US 539, justifies either of two comparatives in determining the question of discrimination:

(1) The measure of total assets to total assets (as inferred in the *Bank of Redemption* and *Weaver* cases); or

(2) The reserves and undivided profits of the savings and loan associations with the actual value of national bank stock (the *Amoskeag, Weaver* and *Davenport* cases).

Appellees' testimony established that there are several possible methods of comparing the effect of a state tax structure on the two types of unlike institutions involved

in this case. One method, as stated above, is the comparison of the tax effect on the total assets by each institution, which seems to be a significant comparison when the alleged competition relates to the employment of assets in the real estate mortgage field. This comparative is in accord with *Bank of Redemption, supra.* Under this comparative, there was approximate tax equality in 1952 between the two institutions under consideration (68b).[12]

A second method [(2) above] specifically approved as to mutual savings banks *(Bank of Davenport* and *Amoskeag Savings Bank* cases, *supra),* involves a comparison of the tax *impact* on the capital, surplus and undivided profits of a national bank with the tax *impact* on all the reserves and undivided profits of the savings and loan associations in question. Taking into consideration the total taxes imposed upon each type of institution (except the unemployment and real property taxes which are imposed equally on these institutions), the resulting percentages are 5.2 for savings and loan associations and 5.6 for the appellant bank.[13]

In reference to the comparison that the appellant insists upon, Professor Woodworth[14] stated that in light of the facts developed in his preceding testimony, such comparison

> "* * * *is completely absurd. It ignores the economic realities of the businesses of the two institutions and*

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[12]

Exhibits 213 (1279a) and 226 (1292a).

[13]

Computations were made from information contained in Exhibits 3 (931a-935a); 208 (1270a); and 209 (1273a-1274a). On this method of comparison, see Professor Woodworth's testimony (862a).

[14]

George Walter Woodworth, Professor of Finance at the School of Business Administration, University of Michigan, and specializing in money and banking.

rests on the superficiality that [a] savings and loan share account is legally an equity rather than a deposit debt and being an equity share is comparable to shares of national bank stock. * *" (861a) (Emphasis supplied)

Appellant does not deny, and both of the courts below specifically found, that the tax structure of the state of Michigan subjected economic equivalents to comparable tax treatment. The Supreme Court stated:

"The record establishes that there was practical equality of the total tax imposed upon building and loan associations and upon national banks, and any difference would be justified as partial exemptions * * *"

"We reiterate and approve the finding of the trial court:

"' 'That Michigan's tax treatment of savings building and loan associations is based upon just cause and does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks.' " (68b-69b)[15]

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[15] This finding of the lower courts was based upon evidence offered by the appellees pertaining to the question of discrimination. In the testimony of Mr. Carlson (747a, et seq.) and Professor Woodworth (803a, et seq.), and in Exhibits 208 (1270a), 208A (1271a), 208B (1272a), 210 (1275a), 212 (1278a), 213 (1279a), and 226 (1292a), the appellees carefully presented the impact of the Michigan tax structure on the institutions in question. This testimony and these exhibits are uncontroverted.

It is therefore clear that the appellant has not presented to this Court a substantial question of discrimination between taxes imposed on its investors and upon savings and loan associations savings share account holders.

B. Michigan is entitled to exempt or preferentially tax savings share accounts of savings and loan associations without violating § 5219.

Even if significant tax discrimination could be said to exist, Michigan's treatment of savings and loan associations does not violate § 5219.

This Court early relied upon the "partial exemption" rule, which was developed to leave intact the states' right, for public policy reasons, to exempt or preferentially tax some moneyed capital without violating § 5219. In origin and purpose, it is not unlike the power of the states to exempt certain property from ad valorem taxation without violating due process, equal protection, and uniformity provisions of constitutions.

Thus, this Court in

Aberdeen Bank v. *Chehalis County*, 166 US 440, at p 454,

quoted the following from

Bell's Gap Railroad Co. v. *Pennsylvania*, 134 US 232, 237, in regard to the partial exemption rule of § 5219:

"'* * * All such regulations, and those of like character, so long as they proceed within reasonable

limits and general usage, are within the discretion of the state legislature, or the people of the State in framing their constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition." " " "

The following decisions clearly establish the partial exemption rule—prescribe its limitations—and bring savings and loan associations within its scope:

People v. Commissioners, 4 Wall 244, 256

Hepburn v. School Directors, 23 Wall 480, 485

Adams v. Nashville, (1877) 95 US 19, 22

Boyer v. Boyer, 113 US 689, 693

Mercantile Bank v. New York, (1887) 121 US 138, 145, 161

National Bank of Wellington v. Chapman, 173 US 205, 214

Aberdeen Bank v. Chehalis County, *supra*, 166 US 440, 460

Bell's Gap Railroad Co. v. Pennsylvania, *supra*, 134 US 232, 237

Davenport Bank v. Davenport, *supra*, 123 US 83, 86

Bank of Redemption v. Boston, *supra*, 125 US 60, 67-68

Mercantile National Bank v. Hubbard, (1899) 98 F 465, 471; aff'd sub nominee *Lander v. Mercantile National Bank*, 186 US 458

Hoenig v. Huntington National Bank, (1932) (CCA 6th Circuit) 59 F 2d 479; Cert. denied 287 US 648

First National Bank of Shreveport v. Louisiana Tax Commission, (1933) 289 US 60

People v. Goldfogle, (1924) 205 NYS 870, 123 Misc 399, aff'd by App Div, 211 NYS 85

First National Bank of Glendive v. Dawson County, (1923) 66 Mont 321; 213 P 1097

Merchants' National Bank of Glendive v. Dawson County, (1933) 93 Mont 310; 19 P 2d 892

Consolidated National Bank v. Pima County, 5 Ariz 142, 48 P 291

To prevail, appellant must circumvent the clear import of these decisions, which is simply that a state's tax on bank shares is not invalidated by § 5219 if the state exempts or preferentially taxes for public policy reasons some moneyed capital. The leading § 5219 case of *Mercantile Bank v. New York, supra*, 121 US 138, quoted and relied upon extensively in *Hartford, supra*, applied the partial exemption rule to mutual savings banks and determined that the exemption and preferential treatment accorded some moneyed capital in New York did not violate § 5219. Counsel for the *Mercantile Bank*, relying upon *Boyer v. Boyer, supra*, 113 US 689, argued that the partial exemption rule was not applicable because the exemption of moneyed capital in New York was

> "* * * of a 'very material part relatively' of the whole, and renders the taxation of national bank shares void.' "[121 US 138, 145]

No tax was imposed by New York on savings banks and municipal bonds. By reliance on *Hepburn v. School Directors, supra*, 23 Wall 480, this Court determined that § 5219 was not thereby violated and stated, at p 161:

"• • • The only limitation, upon deliberate reflection, we now think it necessary to add, is that these exemptions should be founded upon just reason, and not operate as an unfriendly discrimination against investments in national bank shares. However large, therefore, may be the amount of moneyed capital in the hands of individuals, in the shape of deposits in savings banks as now organized, *which the policy of the State exempts from taxation for its own purposes, that exemption cannot affect the rule for the taxation of shares in national banks,* provided they are taxed at a rate not greater than other moneyed capital in the hands of individual citizens otherwise subject to taxation." [121 US 138, at p 161] (Emphasis supplied)

[quoted in *Aberdeen Bank* v. *Chehalis County, supra,* 166 US 440, at p 460].

The rule was otherwise stated in *National Bank of Wellington* v. *Chapman, supra,* 173 US 205, at p 214:

"• • • exemptions from taxation, however large, such as deposits in savings banks or monies belonging to charitable institutions, which are exempted for reasons of public policy and not as an unfriendly discrimination as against investments in national bank shares, cannot be regarded as forbidden by the Federal statute."

This established rule of partial exemption founded upon state public policy considerations has not been altered or changed by any decisions involving § 5219. Furthermore, the congressional creation of federal savings and loan associations by the Home Owners' Loan Act of 1933 demonstrates a congressional recognition and affirmance of the proposition that savings and loan associations are not to

be compared to national banking associations for purposes of determining the validity of state tax systems.

Appellant attempts to convert its unsupported argument into a substantial federal question in this cause by asserting that the partial exemption rule was dependent upon the lack of *factual* competition between the moneyed capital of such institutions and of national banking associations; and, further, that no sound public policy reason exists to justify preferential tax treatment of savings and loan associations. The difficulty with this argument is that it does not jibe with the language employed by this Court on numerous occasions in interpreting § 5219; it is inconsistent with congressional treatment of federal savings and loan associations by the Federal Home Owners' Loan Act of 1933; it requires the *Hartford* case, *supra*, 273 US 548, to be read as overruling the *Mercantile* case, *supra*, 121 US 138; and it ignores the actual proof of competition in some of the partial exemption cases, including *Bank of Redemption* v. *Boston, supra*, 125 US 60, and *Hoenig* v. *Huntington National Bank, supra*, (CCA 6th Circuit) 59 F 2d 479.

The appellant is in error in its contention that the partial exemption rule is not applicable where there is factual competition, as is illustrated by the record in *Bank of Redemption, supra*, 125 US 60, Records and Briefs, US Sup. Ct., Vol. 472, Oct. Term 1887.[16]

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[16] As there stated:

"1. The stipulation of facts reads in part: 'Said savings bank in the year 1885, and in the years before that, received deposits and loaned a part thereof: (1) on promissory notes secured by collateral securities such as they were by law allowed to invest their deposits in; (2) on notes of cities and towns; (3) on promissory notes with two sureties, called 'loans on personal security', in most cases with collateral other than such as mentioned before (except

Appellant's fallacy (that the partial exemption rule is based upon an absence of factual competition) is further illustrated by reference to the *Hoenig* cases [*Commercial Nat. Bank, Columbus, Ohio, et al.*, v. *Treasurer of Franklin County, Ohio*, 45 F 2d 213, reversed by a divided court, *Hoenig* v. *Huntington National Bank, supra*, (CCA 6th Circuit) 59 F 2d 479, certiorari denied 287 US 648]. The District Court in the *Hoenig* litigation appointed a Special Master, who took voluminous evidence pertaining to the question of the competition between savings and loan associations and national banking associations in Ohio in 1926. In his report to the District Judge, the Special Master found that a relatively large and material part of the moneyed capital of building and loan associations was em-

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in the case of notes of corporations which were taken without collateral and to a large amount), * * *." (P 25-Record)

2. The stipulation further indicates that the notes of the savings banks were not materially different, in terms and conditions, from the bank notes and for that reason it was further stipulated that: "In the ordinary course of the business of borrowing and loaning money in Massachusetts persons engaged in obtaining loans on such notes or negotiating them for themselves or others during said years applied for and procured them indiscriminately at said savings banks and said national banks wherever they could obtain them on the best terms; and said savings banks usually made such loans on longer terms and lower rates * * *." (P 26-Record)

3. Of approximately $66,000,000 of total assets of the savings banks in Boston in 1882, $25,000,000 were invested in the type of notes described above. (P 71-Record)

4. Bank assets in Boston in 1882 amounted to approximately $111,000,000 and savings bank assets amounted to approximately $66,000,000, which was in excess of the value of all bank stock in Boston. (P 71-Record)

5. Assets of savings banks in Massachusetts, amounting to approximately $115,000,000, included government bonds, railroad bonds, bank deposits, cash, real estate, loans on real estate mortgages, loans on public funds and bank stock, loans to governmental units, and loans of approximately $62,000,000 which were on personal security. (P 43-Record)

ployed in the making of loans of a kind normal to national banks and in substantial competition with the business of national banks in Ohio.

The District Judge agreed with these findings. In his "Special Findings of Fact and Separate Conclusions of Law" [*Hoenig* Circuit Court of Appeals Record, pp 81, 82], he referred at length to the varied and substantial activity of the savings and loan associations in Ohio, which constituted the same activity carried on by national banks in Ohio and in Columbus. He stated, after analysis of the facts:

> "As a conclusion from the above facts, it is found that while not all of the business done by building and loan companies comes into competition with the plaintiffs and other national banks in the City of Columbus, a relatively large and material part of the moneyed capital of building and loan associations in the City of Columbus is employed in the making of loans of a kind normal to national banks and in substantial competition with the business of the plaintiff banks and other national banks in the City of Columbus in the making of mortgage loans by such national banks and the employment of their capital for said purpose." (pp 81, 82-Record)

Because of such substantial *factual* competition, the District Court held that § 5219 was violated by the Ohio tax on national bank shares. The dissenting judge in the Circuit Court of Appeals arrived at the same conclusion by the same reasoning.

It is thus apparent that the Circuit Court of Appeals, in reversing the District Court, was well aware of the substantial *factual* competition found to exist by the Master

and by the District Court. Without mentioning the finding of substantial *factual* competition, the majority in the *Hoenig* case found no "substantial competition" within § 5219 because of the marked differences between savings and loan institutions and national banks and because the *partial* exemption rule controlled.

The following table is a comparison of some of the statistical information set forth in the *Hoenig* record with the same information for Michigan for the year 1952.

"HOENIG" FACTS* (1926)			FACTS IN THIS CAUSE (1952)		
Assets of All National Banks in Ohio (1)	Assets of All S & L Ass'ns in Ohio (2)	Ratio of (2) to (1)	Assets of All National Banks in Mich. (3)	Assets of All S & L Ass'ns in Mich. (4)	Ratio of (4) to (3)
$947,979,000 [Report of the comptroller of the Currency, 1926, p. 444]	$928,381,733 [78,316]	.98	$3,728,340,000 [Exh. 226]	$534,314,000 [Exh. 6]	.143
Total Real Estate Loans of Banks at Beginning of Year and Percent of Assets	Total Real Estate Loans of Ass'ns at Beginning of Year and Percent of Assets	Ratio of 91% to 5.14%	Total Real Estate Loans of Nat'l Banks in the U.S. in Percent of Total Assets	Total Real Estate Loans of Ass'ns in the U. S. in Percent of Total Assets	Ratio of 81.2% (80.4%) to 7.6%
$48,742,000 [37, 65] = 5.14%	$844,078,474.55 [38, 81] = 91%	17.7	7.6% [Exh. 220, 224A]	81.2% (All S & L Ass'ns in Michigan = 80.4%) [Exh. 209, 224A]	10.7 (10.6)
Deposits of All National Banks in Ohio	Deposits plus "Running Stock" of All Ass'ns in Ohio	Ratio of 79.6% to 71.3%	Deposits of All Nat'l Banks in the U. S.	Share Deposits of All Ass'ns in the U. S.	Ratio of 84.8% (87.0%) to 91.8%
$676,125,000 [64, 343] = 71.3% of total assets	$738,548,784 [316] = 79.6% of total assets	1.12	91.8% of total assets [Exh. 224] (Mich. Nat'l Bank is also 91.8%)	84.8% of total assets 87.0% in Michigan [Exh. 221, 222A]	.92 (.94)

Average Investment**
$497

Average Outstanding Loan
$2805

**Ohio associations had both deposits and savings share account holders. Some persons undoubtedly had both types of accounts. The record does not disclose the average per capita holding in both accounts.

The average investment of $497 includes reserves and undivided profits of $22 per share.

Average Shareholding
$1449 (8-15-52)

Average Outstanding Loan
$4872 (8-15-52)

This table aptly demonstrates (as do many other references to the *Hoenig* record found in the appellees' brief before the Michigan Supreme Court [pp 113-114, 161-171]) that savings and loan associations in Ohio at the time of the *Hoenig* decision were more formidable financial institutions and were as much in competition with the business of national banks as were the 16 savings and loan associations in Michigan in 1952.

It is thus clear that appellant is asking this Court to set aside a previous recognition of established public policy concerning mutual thrift institutions such as savings and loan associations and to overrule the clearly established precedent of this Court that kept intact the partial exemption rule from the early case of *People* v. *Weaver, supra*, (1879) 100 US 539, to date—some 81 years—based only on the reedlike argument that an immaterial issue [factual competition] was not decided in the partial exemption cases.[17]

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[17]

Appellant attempts this also by ignoring the limitations contained in the partial exemption rule, i.e., that the exemption (1) must be partial only, (2) must not operate as an unfriendly or hostile discrimination against owners of national bank stock, and (3) must be based on just reason and sound public policy. While not contending that the Michigan tax structure operates as an unfriendly or hostile discrimination or that the exemption is not partial only, appellant is asking this Court to overrule the established public policy concerning savings and loan associations and other mutual thrift institutions as far as § 5219 is concerned. The contention of the appellant that the established public policy concerning savings and loan associations should be ignored is answered by the lower court as follows (38b-39b):

> "Plaintiff further alleges that there has been such a substantial change in the purpose and character of building and loan associations since the savings bank cases and the Hubbard case that those authorities are no longer applicable.

C. The capital of savings and loan associations, representing savings share accounts, invested in the narrow and restricted field of first mortgage home financing is not in "substantial competition" with the capital of national banks within the purview of § 5219.

Because of the absence of "substantial competition" under § 5219, there is still no substantial federal question.

In consistently ruling out savings and loan associations and mutual savings banks from consideration under § 5219, the courts were well aware of two things: (1) That mutual savings banks and savings and loan associations were re-

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"This same contention was answered by the Circuit Court of Appeals in the Hoenig case. It is answered by the testimony of Professor Woodworth in this case and Congress by its definition of the purpse of the 1933 act effectively settles the question of the character and purpose of these institutions.

"The Michigan Act has not been substantially changed since its adoption in 1887. It continues to provide that building and loan associations shall not do a banking business and shall not accept or advertise for deposits. It has been amended to make it compatible with the Federal 1933 Statute. Its purposes are to continue to be those stated in the Federal Act, namely:

"'To provide local mutual thrift institutions in which people may invest their funds' and (which) 'provide for the financing of homes.'

"The proofs do not support a finding that there has been any material difference between the Michigan institutions of the present day and those organized under the Federal Statute.

* * *

"Both the reasoning of the courts in the savings bank cases, the Hubbard case and the Hoenig case, and the provisions of the 1933 Act relating to Federal Saving and Loan institutions, and those of the Revenue Code giving preferred treatment to such associations in their income taxes (26 U.S.C.A. 116C, 591) furnish convincing proof that Congress had determined and the others recognized just reason for the exemption of [or] preferred tax treatment of these associations."

stricted by legislation to very limited activity and were not permitted to engage in the banking business; and (2) that they were organizations whose business was the direct and active use of the pooled funds of their members as contrasted to national banks, which, as ordinary profit stock corporations, utilized moneys from sources other than their investors to carry on their general banking business.

The question thus posed is: How can fundamentally different institutions, which cannot be compared, be said to be in "substantial competition" within the meaning of § 5219?

Appellant does not attempt to answer this question but *assumes* that savings and loan associations are in *substantial competition* with national banks because both institutions operate in the home financing field. To substantiate this, appellant showed that it employs a part of its assets in the traditional home financing field of the savings and loan associations.[18]

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[18]

Appellant, in its statement as to jurisdiction, poses a question of competition between savings and loan associations and national banks for deposit money. It is submitted that the competition with which § 5219 is concerned is other moneyed capital in competition with the money that would be invested in national bank stock and not money that would be deposited in national banks. The express holding of *Hoenig* v. *Huntington National Bank, supra* (1932) (CCA 6th Circuit) 59 F 2d 479 (cert. denied 287 US 648) forecloses such argument. As there stated at pp 482-483:

> "As to the alleged 'competition for deposits,' it is evident from the universal expressions of opinion by the Supreme Court that competition, in the sense intended, is limited to the employment of moneyed capital 'substantially as in the loan and investment features of banking.' Deposits constitute moneyed capital, but national banks are not taxed upon their deposits any more than are savings banks and building as-

Appellant gives no recognition in its argument to the established rule that the issue of substantial competition with the business of national banks presents a mixed question of fact and of law. As stated by this Court in the case of *First National Bank* v. *Hartford*, *supra*, (1927) 273 US 548, at p 552:

> "* * * The validity of the tax complained of depends upon whether or not the moneyed capital in the state thus favored is employed in such a manner as to bring it into substantial competition with the business of national banks.
>
> "The question thus raised involves considerations *both of fact and of law*. To answer it, it is necessary to ascertain the nature and extent of the moneyed capital in the hands of individual citizens within the state and the relation of its employment, in point of competition, to the business of plaintiff and other national banks [QUESTION OF FACT]. It is necessary also to ascertain the precise meaning to be given the statute as applied to the facts in hand in order to determine whether the *particular moneyed capital* and the *particular competition* with which we are here concerned

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sociations; "and we are here primarily concerned only with what is done with such moneyed capital after it is secured, not with competition to obtain it. There is clearly no distinction in law between the competition for deposits as between national banks and savings banks, and the same competition as between national banks and building associations. Thus *Mercantile Nat. Bank* v. *New York*, *supra*, seems directly in point on this issue."

or, as otherwise stated in *People* v. *Goldfogle*, *supra*, (1924) 205 NYS 870, at p 879, 123 Misc. 399 (aff'd by App. Div. 211 NYS 85):

> "* * * The very depositor in the national bank itself is lending money to the bank, often at interest, but such persons do not actually compete for business with a national bank."

are moneyed capital and competition *within the spirit and purpose of the statute* [QUESTION OF LAW]. The question is thus a mixed one of law and fact, and in dealing with it we may review the facts in order correctly to apply the law. * * *"
(Bracketed material and emphasis added)

The *fact* of "competition" is the "nature and extent of the moneyed capital" and the "relation of its employment, in point of competition, to the business of * * * national banks." The *law* of "competition" is "to ascertain the precise meaning to be given the statute as applied to the facts in hand in order to determine whether the particular moneyed capital and the particular competition * * * are moneyed capital and competition within the spirit and purpose of the statute." Ultimate decision is to be made by the application of the *law* of "competition" to the conclusions reached as to factual competition to determine whether the competition is of such a *character or quality* that it will substantially interfere with the operation and proper functioning of national banks and thus constitute a hostile and unfriendly discrimination against the business of national banks and discourage investments in national bank shares.

If competition is found to be substantial in amount but not of the kind or quality which evidences an intent to discriminate against national bank shares or create an unfriendly or hostile attitude against the business of national banks and thus jeoparadize the national banking system, such competition is not "substantial" as a matter of law, as the phrase "substantial competition" is used in the decisions interpreting § 5219.[19]

[19]
In some cases the courts have used the phrase "other moneyed capital" as being limited to capital employed in substantial com-

It clearly follows that the phrase "substantial competition" does not mean competing however keen or large in amount, within a limited segment of the national banking business. It means competition, of a serious character, with the *major or characteristic functions* of national banking business. It is believed this interpretation and application of "substantial competition" has been the concern of the courts in deciding the § 5219 cases. Viewing "substantial competition" in this light, it is of course necessary to determine the nature and character of the institutions competing, as well as the employment of their capital, to see what phases of the business of national banks could be adversely affected if such moneyed capital were tax exempt or taxed at a lower rate than national bank shares. This was well recognized by this Court in *First National Bank of Shreveport* v. *Louisiana Tax Commission, supra,* (1933) 289 US 60, which realistically approached this problem and held that savings and loan associations were not comparable and were of a completely different character than national banking associations. Therefore, they could not be in substantial competition as a matter of law.

Appellees' witness Professor George Walter Woodworth, Professor of Finance at the School of Business Administration, University of Michigan, who testified at length concerning the nature and activities and economic structure of commercial national banks, mutual banks, and savings and loan associations, concluded that savings and loan associations were not in substantial competition in a true, factual, or economic sense with appellant or other national banks. Only brief references to his testimony have been made here.

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petition with the business of national banks, while, in other cases, the courts have referred to "moneyed capital" as the kind of capital that can compete in a legal sense.

Verbatim reading of his testimony clearly indicates the true nature of the competitive situation at bar (803a-910a).[20]

The Michigan Supreme Court specifically found that

> "The record in this appeal discloses that Michigan building and loan associations operated in a narrow, restricted field, are markedly different in character, purpose and organization from national banks, and are not in (substantial competition) with national banks." (68b)

It is therefore clear that the appellant has not met the tests of "substantial competition" within the purview of § 5219 and thereby has failed to present a substantial federal question for review by this Court.

2.

APPELLANT HAS NOT PROPERLY RAISED A FEDERAL QUESTION.

The foregoing analysis of the applicable statutory and case law establishes that a proper federal question in the instant case can be predicated only upon:

(1) Changes in the *character* and *purpose* of savings and loan associations doing business in Michigan in 1952 rendering inapplicable the partial exemption rule.

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[20]

His testimony is analytical, instructive and informative. It was developed in reference to the specific circumstances of this cause. It was, significantly, the only expert opinion offered at the trial of this cause concerning the comparison of national banks and savings and loan associations.

(2) A showing that the tax structure of Michigan evidences, on the part of the Michigan legislature, a hostile and unfriendly discrimination against investors in national bank stock.

Since appellant does not contend that either of these conditions existed in 1952, it has not laid a foundation to properly raise a federal question for review and adjudication by this Court.

3.

THE DECISION OF THE STATE COURT IS CONCLUSIVE.

The trial court, after an exhaustive analysis of the applicable decisions of this Court, stated:

"* * * I conclude:

"1. Since 1887, the Courts have consistently held in every case squarely involving the question that the state may exempt or prefer on the ground of public policy mutual savings bank and other like institutions, provided such exemption is based on just reason and is not made for the hostile purpose of an unfriendly discrimination with national banks.

"2. That the power of the State to make such exemptions on the ground of public policy is an important one, grounded in history and on precedent. The intention of Congress to destroy it should not be lightly inferred.

"3. The 1923 and 1926 amendments to section 5219 and the amendments to the Federal Reserve Act

broadening the powers of the national banks were not intended to take from the State such long established and well recognized power.

"4. That from their beginnings and continuously throughout their history, building and loan associations have been similar in character and purpose to and of the same general class of mutual thrift and home financing institutions as mutual savings banks.

"5. That Congress in the Home Owners Loan Act of 1933 definitely recognized and approved such classification of savings building and loan associations and the propriety of different tax treatments of banks and such associations and in effect, said that money invested in such associations is not moneyed capital in competition with the business of national banks.

"6. That Michigan's tax treatment of savings building and loan associations is based upon just cause and does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks." (41b-42b)

These conclusions were favorably reiterated by the Michigan Supreme Court (50b-51b). In addition, the Supreme Court of Michigan specifically found:

(7) "*The record in this appeal discloses that Michigan building and loan associations operated in a narrow, restricted field, are markedly different in character, purpose and organization from national banks, and are not in 'substantial competition' with national banks.*" (68b) (Italics added)

(8) "The record establishes that there was prac-

> tical equality of the total tax imposed upon building and loan associations and upon national banks, and any difference would be justified as partial exemptions under the decisions of the supreme court of the United States quoted above. The restriction contained in RS § 5219 has to do with the actual incidents and practical burden of the tax imposed. * * *" (68b)

Findings "4," "6" and "8" above are factual in nature and conclusively indicate that the partial exemption cases are dispositive of the federal question sought to be raised by the appellant.

Even assuming that the partial exemption rule is no longer applicable because findings of fact "4," "6" and "8" were in error and the argument of appellant in this cause were otherwise valid, the finding of the Michigan Supreme Court that there was no "substantial competition" (Finding "7" above, a mixed question of fact and law under the *Hartford* case) between the 16 savings and loan associations in question and the appellant national bank is still conclusive.

RELIEF

It is respectfully submitted, for the reasons herein stated, that this honorable Court should either dismiss the appeal of the appellant or affirm the judgment of the lower court.

Respectfully submitted,

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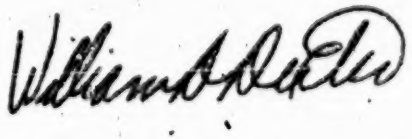

ADDENDUM A

THE TAXATION OF INTANGIBLE PROPERTY IN MICHIGAN

The State of Michigan has always taxed the shares of national banks. Prior to 1939, certain shares were taxed pursuant to the statutory formula under the ad valorem tax law, which covered all real and personal property in Michigan.[21] It was very difficult; if not impossible, to subject to ad valorem taxation intangible personal property at the ordinary ad valorem rates. It is a matter of common historical knowledge that such intangibles were not disclosed for ad valorem taxation purposes and that it was impossible for local assessors to ferret out intangible property and place it on the local ad valorem property tax rolls. In an effort to meet this problem, many states provided for the taxation of intangible personal property at a much lower rate than the ad valorem rate. By lowering the rate on intangible property, these states hoped to get fuller disclosure of such properties for tax purposes. In many states, even though the new intangibles tax rate was only a fraction of the old ad valorem tax rate, the amount of the tax received from intangible property increased.

By the enactment of the intangible tax act in 1939, bank shares were taxed in a manner similar to the shares of other financial institutions and corporations — at a rate of 6% of the divided income but not less than 1/10th of one per cent or more than 3/10ths of one per cent per par, face or contributed value of the share.[22]

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[21] Act 206, Mich. Pub. Acts 1893 [Mich. Comp. Laws § 211.8(8); Mich. Stat. Ann. (Henderson) § 7.8(8)].

[22] Act 301, Mich. Pub. Acts 1939 [Mich. Comp. Laws § 205.131, et seq.; Mich. Stat. Ann. (Henderson) § 7.556(1), et seq.]

Subsequent to the original enactment, amendments changed the rates and as to bank shares, provided for the collection of the tax at the source.[23]

In 1952 the legislature amended the intangibles tax act and provided that, in the case of income-producing bank shares, the tax should be measured by 3½% of income or 1/10th of one per cent of par value, whichever is greater. A tax at the same rate was imposed upon all other intangibles with the exception of bank deposits and savings and loan shares, which were taxed at the rate of 1/25th of one per cent to the savings shareholder or the bank depositor. However, these taxes were required to be returned by the institutions. They could elect to absorb them.

In 1952 the legislature further amended the act to provide for an additional intangibles tax on shares of banks and trust companies equal to 4 mills per dollar of the book value. Before this 4-mill tax became due and payable, the legislature in 1953 adopted Act 9, effective March 25 of that year, which is the statute in question here. It provided that for the calendar year 1952 and thereafter, the exclusive tax on all shares of banks and trust companies should be 5½ mills per dollar, measured by the capital, surplus and undivided profits represented by each share of the common stock for such year. Preferred stock of any such institution was taxed at the same rate.[24]

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[23]

Act 301, Mich. Pub. Acts 1939, as amended by Act 223, Mich. Pub. Acts 1941; Act 165, Mich. Pub. Acts 1945; Act 175, Mich. Pub. Acts 1947; Act 308, Mich. Pub. Acts 1949; and Acts 76 and 246, Mich. Pub. Acts 1951.

[24]

Act 9, Mich. Pub. Acts 1953 [Mich. Comp. Laws 205.132a; Mich. Stat. Ann. (Henderson) 7.556(2)]

OTHER TAXES IMPOSED IN MICHIGAN ON FINANCIAL BUSINESS IN 1952

In 1952, federal and state savings and loan associations were taxed at the rate of 1/10th of a mill on authorized capital stock.[25] Foreign corporations doing business in Michigan were subject to the same tax, the amount of their taxable property being determined in accordance with a statutory formula.[26]

All financial businesses (individuals, partnerships, corporations) holding tangible personal property and real prop-

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[25]

Act 183, Mich. Pub. Acts 1952 [Mich. Comp. Laws § 450.308, et seq.; Mich. Stat. Ann. (Henderson) § 21.203, et seq.]

By Act 144, Mich. Pub. Acts 1954 [Mich. Comp. Laws § 450.303, et seq.; Mich. Stat. Ann. (Henderson) § 21.203, et seq.], the legislature repealed the franchise and privilege taxes imposed on foreign and domestic building and loan associations.

By Act 157, Mich. Pub. Acts 1954 [Mich. Comp. Laws § 489.29, et seq.; Mich. Stat. Ann. (Henderson) § 23.572, et seq.], the legislature imposed a privilege tax on domestic building and loan associations equal to 1/4th mill on the amount of capital and reserves; and a franchise tax equal to 1/10th mill on authorized capital.

By Act 158, Mich. Pub. Acts 1954 [Mich. Comp. Laws § 489.201, et seq.; Mich. Stat. Ann. (Henderson) § 23.591, et seq.] foreign and state building and loan associations were subject to a privilege tax equal to 1/4th mill on capital and reserves and a franchise tax equal to 1/10th mill on paid-in capital.

By Act 180, Mich. Pub. Acts 1954 [Mich. Comp. Laws § 489.371, et seq.; Mich. Stat. Ann. (Henderson) § 23.589(1), et seq.], federal savings and loan associations were subject to a privilege tax equal to 1/4th mill on capital and reserves.

[26]

Act 85, Mich. Pub. Acts 1921, as amended by Act 183, Mich. Pub. Acts 1952 [Mich. Comp. Laws § 450.303; Mich. Stat. Ann. (Henderson) § 21.203]

erty in Michigan pay uniform ad valorem taxes,[27] (except in the case of banks and trust companies as to personalty)[28] the amount of which is determined by the local rate.

Domestic insurance companies are subject to an annual tax of 5 mills, measured by capital, surplus and unassigned funds. The maximum tax is $50,000.[29] Foreign insurance companies pay premium taxes ranging from 2% to 3% of their gross premiums received from Michigan sources.[30]

Federal and domestic credit unions are exempt from all taxation except real and tangible personal property taxes.

All other financial businesses other than national banks, including state banks and trust companies, were subject to miscellaneous state tax measures, which included use tax on their purchases and sales tax on their sales, being of the nature that could not be imposed upon national banking associations under the provisions of § 5219.

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[27]

Act 206, Mich. Pub. Acts 1893 [Mich. Comp. Laws § 211.1, et seq.; Mich. Stat. Ann. (Henderson) § 7.1, et seq.]

[28]

Act 261, Mich. Pub. Acts 1949 [Mich. Comp. Laws § 211.9; Mich. Stat. Ann. (Henderson) § 7.9]

[29]

Act 180, Mich. Pub. Acts 1952 [Mich. Comp. Laws § 505.1; Mich. Stat. Ann. (Henderson) § 24.64(1)]

[30]

Act 91, Mich. Pub. Acts 1923 [Mich. Comp. Laws § 512.17; Mich. Stat. Ann. (Henderson) § 24.105]